



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/688,268 | 10/13/2000 | J. Bruce Mixer JR. | BLD9-2000-0058US1 | 9896 |

7590 02/10/2004
Harry F Smith Esq
Ohlandt Greeley Ruggiero & Perle LLP
One Landmark Square 9th Floor
Stamford, CT 06901-2682

EXAMINER

GROSS, KENNETH A

ART UNIT PAPER NUMBER

2122

DATE MAILED: 02/10/2004

5

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/688,268

Applicant(s)

MIXER, J. BRUCE

Examiner

Kenneth A Gross

Art Unit

2122

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38-74 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 38-52, 57-65 and 70-74 is/are rejected.
- 7) ☒ Claim(s) 53-56 and 66-69 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to the amendment filed on December 1st, 2003.
2. Claims 1-37 are hereby cancelled. New claims 38-52, 57-65, and 70-74 are hereby rejected under 35 U.S.C. 103(a).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 38-44, 46-50, 52, 57-60, 63, 65, 70-72, and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bluethman et al. (U.S. Patent Number 4,095,277) in view of Kopsaftis (U.S. Patent Number 5,659,801).

For specific rejections of Claims 38-44, 46-50, 52, 57-60, 63, 65, 70-72, and 74, see the rejections to Claims 1-7, 9-13, 15, 20-23, 26, 28, 33-35, and 37, respectively, in the office action mailed on August 27th, 2003. Note these claims correspond directly with the new claims, and the same art rejection is applied to the new claims as was applied to the old claims.

5. Claims 45, 62, and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bluethman et al. (U.S. Patent Number 4,095,277) in view of Kopsaftis (U.S. Patent Number 5,659,801) and further in view of Gauronski et al. (U.S. Patent Number 5,206,735).

For specific rejections of Claims 45, 62, and 73, see the rejections to Claims 8, 25, and 36, respectively, in the office action mailed on August 27th, 2003. Note these claims correspond

Art Unit: 2122

directly with the new claims, and the same art rejection is applied to the new claims as was applied to the old claims.

6. Claim 51 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bluethman et al. (U.S. Patent Number 4,095,277) in view of Kopsaftis (U.S. Patent Number 5,659,801) and further in view of Williams, Jr. (U.S. Patent Number 4,868,866).

For specific rejections of Claims 51 and 64, see the rejections to Claims 14 and 27, respectively, in the office action mailed on August 27th, 2003. Note these claims correspond directly with the new claims, and the same art rejection is applied to the new claims as was applied to the old claims.

7. Claim 61 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bluethman et al. (U.S. Patent Number 4,095,277) in view of Kopsaftis (U.S. Patent Number 5,659,801) and further in view of Misunas et al. (U.S. Patent Number 4,174,536).

For specific rejections of Claim 61, see the rejection to Claim 24 in the office action mailed on August 27th, 2003. Note this claim corresponds directly with the new claim, and the same art rejection is applied to the new claim as was applied to the old claim.

Allowable Subject Matter

8. Claims 53-56 and 66-69 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Art Unit: 2122

9. Applicant's arguments filed December 1st, 2003 have been fully considered but they are not persuasive.

In regard to Claim 38, the applicant states that Bluethman only teaches changing general high-level commands for the printer, and it is unclear how this relates to a microcode update file (Page 11, lines 11-14). However, Kopsaftis does teach embedding a microcode update file in a package that is sent to a peripheral device (such as a printer). The benefit that these microcode update commands are embedded in a print job file comes from Bluethman, since Bluethman teaches the benefit of embedding commands in a print job file.

Furthermore, applicant states that Kopsaftis does not mention a printer, only a peripheral device (Page 11, lines 16-17). However, it is understood that a printer is a well-known type of peripheral device, and it would be obvious to apply Kopsaftis to any known peripheral device, such as a printer.

The applicant also argues that the claimed microcode update file is in a normal printer data stream that the printer can already receive and that a user can already send without requiring a specific application program, whereas Kopsaftis requires an application program with specific back and forth commands from the peripheral device (Page 12, lines 3-7). However, if this is indeed true, there is no claim language in Claim 38 that suggests that an application program is not used in the installation of the update file.

In regard to Claim 39, the applicant argues that Figure 2 of Kopsaftis does not clearly show how the header shows the presence of microcode (Page 12, lines 13-14). The applicant is directed to Column 5, lines 47-62, which indicates how the processor of the peripheral reads the

Art Unit: 2122

header of the packet, and recognizes the need to write microcode data from the packet to the peripheral memory.

In regard to Claim 40, the applicant argues that Kopsaftis teaches a general data block, not a print job file. The applicant is directed to the response to the arguments of Claim 38, which shows the benefit of embedding commands in a print job file as opposed to a block of data.

In regard to Claim 44, the applicant states that Claim 44 differs from Kopsaftis in that the microcode is transferred to the processor and executed immediately without restarting the processor (Page 13, lines 6-8). However, there is no language in Claim 44 that suggests that the processor does not restart before the microcode is executed. Furthermore, Kopsaftis teaches that the processor is restarted “using the new microcode”, and hence the microcode is executing during the processor restart (Column 10, lines 37-40).

In regard to Claim 46, the applicant states that Claim 46 does not refer to any execution queue, but rather allowing a new microcode to execute immediately and then further process the receipt of the rest of the printer job (Page 13, lines 15-18). However, the claim recites, “loading said executable program as a **next task** to be performed while **another task** is in process” (emphasis added). This suggests that the microcode is executed *after* another task. If this other task is the rest of the printer job, then the microcode is not executing immediately, but rather executing *after* the remainder of the print job is finished executing. Furthermore, the claim language “another task” does not necessarily suggest that this task is the remainder of the print job, and can be given the broadest possible interpretation. Finally, the applicant states that the microcode update and the remainder of the print job “is a single job” (Page 13, lines 23).

Art Unit: 2122

However, the claim refers to a “next task” and a “single task”, indicating that the printer has two jobs to process.

In regard to Claim 45, the applicant states that Gauronski teaches resuming execution of a print job rather than the claimed returning executing microcode in a processor (Page 14, lines 23-25). However, this is not the claimed invention. Claim 45 teaches returning “execution to a previously running program”. It is not stated in the claim that this program is the executing microcode. The term “previously running program” can be given the broadest reasonable interpretation.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 2122

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth A Gross whose telephone number is (703) 305-0542. The examiner can normally be reached on Mon-Fri 7:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q Dam can be reached on (703) 305-4552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KAG



TUAN DAM
SUPERVISORY PATENT EXAMINER